

2001 No. 36

FAMILY LAW

JUDGMENTS

The European Communities (Matrimonial Jurisdiction and Judgments) (Scotland) Regulations 2001

<i>Made</i>	<i>6th February 2001</i>
<i>Laid before the Scottish Parliament</i>	<i>7th February 2001</i>
<i>Coming into force</i>	<i>1st March 2001</i>

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the European Communities (Matrimonial Jurisdiction and Judgments) (Scotland) Regulations 2001 and shall come into force on 1st March 2001.

(2) These Regulations extend to Scotland only.

Amendment of the Domicile and Matrimonial Proceedings Act 1973

2.—(1) The Domicile and Matrimonial Proceedings Act 1973(b) is amended in accordance with paragraphs (2) to (5) of this regulation.

(2) In section 7(c)–

- (a) in subsection (2), the words “divorce, separation or ” are repealed;
- (b) after that subsection, insert–

“(2A) The Court shall have jurisdiction to entertain an action for divorce or separation if (and only if)–

- (a) the Scottish courts have jurisdiction under the Council Regulation; or
- (b) the action is an excluded action and either of the parties to the marriage in question is domiciled in Scotland on the date when the action is begun.”;
- (c) in subsection (3), the words “or declarator of nullity of marriage” are repealed;
- (d) after that subsection, insert–

“(3A) The Court shall have jurisdiction to entertain an action for declarator of nullity of marriage if (and only if)–

- (a) the Scottish courts have jurisdiction under the Council Regulation; or

(a) 1972 c.68; section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15. Functions conferred on Ministers of the Crown under section 2(2) were, so far as exercisable within devolved competence, transferred to the Scottish Ministers by section 53 of the Scotland Act 1998.

(b) 1973 c.45.

(c) Section 7 was amended by the Presumption of Death (Scotland) Act 1977 (c.27), Schedule 2.

- (b) the action is one to which subsection (3B) below applies and either of the parties to the marriage–
 - (a) is domiciled in Scotland on the date when the action is begun; or
 - (b) died before that date and either–
 - (i) was at death domiciled in Scotland; or
 - (ii) had been habitually resident in Scotland throughout the period of one year ending with the date of death.
 - (3B) This subsection applies to an action–
 - (a) which is an excluded action; or
 - (b) where one of the parties to the marriage died before the date when the action is begun.”;
 - (e) in subsection (5)–
 - (i) for “or (3) above”, substitute “, (2A), (3) or (3A) above”; and
 - (ii) for “under subsection (2) or (3)”, substitute “under any of those subsections”;
 - (f) after that subsection, insert–

“(5A) Subsection (5) does not give the Court jurisdiction to entertain proceedings in contravention of Article 7 of the Council Regulation.”; and
 - (g) in subsection (8), for “subsection (2) or (5) above” substitute “this section”.
- (3) In section 8(a)–
- (a) in subsection (2), for paragraph (a) substitute–

“(a) either–

 - (i) the Scottish courts have jurisdiction under the Council Regulation; or
 - (ii) the action is an excluded action where either party to the marriage in question is domiciled in Scotland at the date when the action is begun.”;
 - (b) after subsection (3), insert–

“(3A) Subsection (3) does not give the court jurisdiction to entertain an action in contravention of Article 7 of the Council Regulation.”; and
 - (c) in subsection (4), after “enactment or rule of court” add “, provided that entertaining the action would not contravene Article 7 of the Council Regulation”.
- (4) In section 10(b), after subsection (1A) insert–
- “(1B) Subsection (1) above does not give the Court of Session or a sheriff court jurisdiction to entertain an application in proceedings where–
- (a) the court is exercising jurisdiction in the proceedings by virtue of Article 2 of the Council Regulation; and
 - (b) the making or variation of an order in consequence of the application would contravene Article 7 of the Council Regulation.”.
- (5) In section 12, in subsection (5)–
- (a) the words from “any reference” to the end shall be paragraph (a); and
 - (b) after that paragraph, add–
 - (b) “Contracting State” means Belgium, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden, and the United Kingdom;
 - (c) “the Council Regulation” means Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses(c); and
 - (d) “excluded action” means an action in respect of which no court of a Contracting State has jurisdiction under the Council Regulation and the defender is not a person who is–
 - (i) a national of a Contracting State (other than the United Kingdom or Ireland); or

(a) Section 8 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c.12), Schedule 1, paragraph 18.

(b) Section 10 was amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 20(2).

(c) O.J. No. L 160, 30.6.00, p.19.

- (ii) domiciled in Ireland”.

Amendment of the Child Abduction and Custody Act 1985

3. In section 12 of the Child Abduction and Custody Act 1985(a), after subsection (2) insert–

“(3) But those provisions of the Convention are subject to Article 37 of Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses (under which the Regulation takes precedence over the Convention), and the provisions of this Part of this Act, and any rules of court made pursuant to section 24 of this Act, shall be construed accordingly.”.

Amendment of the Family Law Act 1986

4.—(1) The Family Law Act 1986(b) is amended in accordance with paragraphs (2) to (6) of this regulation.

(2) In section 15(1)(c), after “this Act” in paragraph (b) insert “or by virtue of the Council Regulation”.

(3) In section 26–

- (a) the existing provisions shall be subsection (1); and
- (b) after that subsection, add–

“(2) Subsection (1) above shall not apply to an order as regards which provision as to recognition is made by Articles 14 to 20 of the Council Regulation.”.

(4) In section 42(1)(d), at the end add–

““the Council Regulation” means Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses”.

(5) In section 45–

- (a) the existing provisions shall be subsection (1);
- (b) in that subsection, after “Subject to” insert “subsection (2) of this section and”; and
- (c) after that subsection as so amended, add–

“(2) Subsection (1) and the following provisions of this Part do not apply to an overseas divorce, annulment or legal separation as regards which provision as to recognition is made by Articles 14 to 20 of the Council Regulation.”.

(6) In section 54(1), after the definition of “annulment” add–

““the Council Regulation” means Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses;”.

Amendment of the Children (Scotland) Act 1995

5. After subsection (1) of section 11 of the Children (Scotland) Act 1995(e), insert–

“(1A) It shall not be competent for the court to make an order under subsection (1) above where–

- (a) the court is exercising jurisdiction in the proceedings by virtue of Article 2 of Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses; and
- (b) the making of such an order would contravene Article 7 of that Regulation.”.

(a) 1985 c.60.

(b) 1986 c.55.

(c) Section 15(1) was amended by the Children (Scotland) Act 1995, Schedule 4, paragraph 41(4).

(d) Section 42(1) was amended by the Children (Scotland) Act 1995, Schedule 4, paragraph 41(9)(a).

(e) 1995 c.36.

Application

6. The amendments to the Domicile and Matrimonial Proceedings Act 1973 made by regulation 2 shall not apply in respect of proceedings commenced before 1st March 2001.

St Andrew's House,
Edinburgh
6th February 2001

JAMES WALLACE
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with the coming into force on 1st March 2001 of Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses. The Council Regulation makes provision for common rules on jurisdiction in matrimonial proceedings to apply throughout the Member States of the European Union (other than in Denmark, which has decided not to participate in the Regulation).

Statutory provisions operative in Scotland are amended where they would otherwise be inconsistent with that directly applicable Regulation. Amendments are made to the Domicile and Matrimonial Proceedings Act 1973 (regulations 2 and 6), the Child Abduction and Custody Act 1985 (regulation 3), the Family Law Act 1986 (regulation 4), and the Children (Scotland) Act 1995 (regulation 5).

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